

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

SOCIAL RESPONSIBILITY

UNCTAD Series
on issues in international investment agreements



UNITED NATIONS
New York and Geneva, 2001

NOTE

UNCTAD serves as the focal point within the United Nations Secretariat for all matters related to foreign direct investment and transnational corporations. In the past, the Programme on Transnational Corporations was carried out by the United Nations Centre on Transnational Corporations (1975-1992) and the Transnational Corporations and Management Division of the United Nations Department of Economic and Social Development (1992-1993). In 1993, the Programme was transferred to the United Nations Conference on Trade and Development. UNCTAD seeks to further the understanding of the nature of transnational corporations and their contribution to development and to create an enabling environment for international investment and enterprise development. UNCTAD's work is carried out through intergovernmental deliberations, research and analysis, technical assistance activities, seminars, workshops and conferences.

The term "country" as used in this study also refers, as appropriate, to territories or areas; the designations employed and the presentation of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. In addition, the designations of country groups are intended solely for statistical or analytical convenience and do not necessarily express a judgement about the stage of development reached by a particular country or area in the development process.

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UNCTAD/ITE/IIT/22

UNITED NATIONS PUBLICATION

Sales No. E.01.II.D.4

ISBN 92-1-112514-6

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Printed in Switzerland

IIA Issues Paper Series

The main purpose of the UNCTAD Series on issues in international investment agreements – and other relevant instruments – is to address concepts and issues relevant to international investment agreements and to present them in a manner that is easily accessible to end-users. The series covers the following topics:

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Preface

The secretariat of the United Nations Conference on Trade and Development (UNCTAD) is implementing a work programme on international investment agreements. It seeks to help developing countries to participate as effectively as possible in international investment rule-making at the bilateral, regional, plurilateral and multilateral levels. The programme embraces capacity-building seminars, regional symposia, training courses, dialogues between negotiators and groups of civil society and the preparation of a Series of issues papers.

This paper is part of that Series. It is addressed to government officials, corporate executives, representatives of non-governmental organisations, officials of international agencies and researchers. The Series seeks to provide balanced analyses of issues that may arise in discussions about international investment agreements. Each study may be read by itself, independently of the others. Since, however, the issues treated closely interact with one another, the studies pay particular attention to such interactions.

The Series is produced by a team led by Karl P. Sauvant and Pedro Roffe. The principal officer responsible for its production is Anna Joubin-Bret who oversees the development of the papers at various stages. The members of the team include S. M. Bushehri, Patricia Mira Pontón, Aimé Murigande and Jörg Weber. The Series' principal advisors are Arghyrios A. Fatouros, Sanjaya Lall, Peter T. Muchlinski and Patrick Robinson. The present paper is based on a manuscript prepared by Peter T. Muchlinski and Sol Picciotto. The final version reflects comments received from Marino Baldi, Werner Corrales, William Dymond, Rainer Geiger, Felipe Jaramillo, Georg Kell, John Kline, Stephen Pursey, Mansur Raza, Homai Saha, Chak Mun See, Marinus Sikkel and Andreas Ziegler. The paper was desktop-published by Teresita Sabico.

Geneva, April 2001

Rubens Ricupero
Secretary-General of UNCTAD

Acknowledgments

UNCTAD's work programme on international investment agreements is implemented by a team of UNCTAD staff members and consultants headed by Karl P. Sauvant, Khalil Hamdani and Pedro Roffe and including Marianela Bruno-Pollero, S.M. Bushehri, Arghyrios A. Fatouros, John Gara, Anna Joubin-Bret, Sanjaya Lall, Patricia Mira Pontón, Peter T. Muchlinski, Aimé Murigande, Patrick Robinson and Jörg Weber. Administrative support is provided by Héléne Dufays-Budhdeo and Séverine Excoffier.

UNCTAD has carried out a number of activities related to the work programme in co-operation with other intergovernmental organizations, including the Secretariat of the Andean Community, l'Agence pour la Francophonie, the Inter-Arab Investment Guarantee Corporation, the League of Arab States, the Organization of American States, la Secretaria de Integración Económica Centroamericana and the World Trade Organization. UNCTAD has also cooperated with non-governmental organizations, including the German Foundation for International Development, the Centro de Estudios Interdisciplinarios de Derecho Industrial y Económico – Universidad de Buenos Aires, the Consumer Unity and Trust Society – India, the Economic Research Forum – Cairo, the European Roundtable of Industrialists, the Friedrich Ebert Foundation, the International Confederation of Free Trade Unions, Oxfam, SOMO – Centre for Research on Multinational Corporations, the Third World Network, la Universidad del Pacifico, the University of the West Indies, and World Wildlife Fund International.

Funds for the work programme have so far been received from Australia, Brazil, Canada, France, Japan, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom and the European Commission. Countries such as China, Egypt, Guatemala, India, Jamaica, Morocco, Peru, Sri Lanka and Venezuela have also contributed to the work programme by hosting regional symposia. All of these contributions are gratefully acknowledged.

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Executive summary

The social responsibility of corporations, including transnational corporations (TNCs), is typically not addressed in most international investment agreements (IIAs). Nonetheless, it is a question that has been raised through the adoption, since the 1970s, of international codes of conduct for TNCs. More recently, it has been addressed in a number of international fora and the United Nations Global Compact. The concept of corporate social responsibility is potentially very wide and may encompass most matters pertaining to the economic and social impact of TNCs. However, a more specialized approach to this concept is emerging. As a result, a number of aspects — including development obligations, socio-political obligations and consumer protection — have received some attention, and others (especially corporate governance, ethical business standards and the observance of human rights) seem to be emerging issues. These matters constitute the focus of the present paper. This is in addition to obligations particularly as regards the environment and employment issues, which are sufficiently developed in relation to their operation in international investment instruments to deserve separate study in other papers in this Series.

Given that the issues covered by this paper are relatively new to IIAs, but that their content is already developed in other instruments and codes of conduct, the stocktaking in section II draws not only on IIA provisions but also on provisions in other instruments that offer examples of the types of provisions that may be used to operationalize social responsibility obligations.

Social responsibility obligations interact with a number of other concepts, including taxation, transfer pricing,

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